return of normal conditions, the vendor shall obtain a special power of attorney from the said Somasundaram Chettiar now in India and execute a true and lawful transfer of the said land at the purchaser's own expenses." He further agreed that if he was unable to obtain the necessary power from his principal, the $7,000 was to be returned to the respondent. At the trial the learned Judge held that the agreement had been satisfied by Somasundaram Chettiar and he therefore dismissed a claim for recovery of possession of the land.

Held: the terms of the agreement showed that Palaniappa Chettiar was acting in his personal capacity and therefore the principle of ratification cannot apply to the agreement.

Case referred to:—

(1) *Wilson v. Tumman* (1843), 6 M. & C. 242.

COURT OF APPEAL. Appeal from the judgment of Storr J.

A. N. Mitra for the appellant.

S. Chelvasingam-MacIntyre (Suleiman Abdulrahman with him) for the respondent.

Mathew C.J. : — This litigation arose out of an agreement entered into on the 7th February, 1945 between one L. Palaniappa Chettiar the attorney of one S.R.M.M. Somasundaram Chettiar, and the respondent. Under this agreement, Palaniappa Chettiar handed over to the respondent a certain piece of land (in Batu Pahat) the property of his principal, in consideration of a sum of $7,000, and agreed (by clause 2 thereof) :—

"That upon return of normal conditions, the vendor shall obtain a special power of attorney from the said S.R.M.M. Somasundaram Chettiar now in India and execute a true and lawful transfer of the said land at the purchaser's own expenses."

If he was unable to obtain the necessary power from his principal, the $7,000 was to be returned to the respondent.

In the recital to the said agreement it was specifically mentioned that Palaniappa Chettiar had no power from his principal to effect the transfer of the land. A perusal of the agreement shows clearly that it was entered into by Palaniappa Chettiar in his personal capacity, and clause 2 of the agreement puts it beyond doubt. The word 'vendor' can only refer to Palaniappa Chettiar. Had he intended to bind his principal, the agreement would have been in a different form, and would have between 'Somasundaram Chettiar by his attorney Palaniappa Chettiar' and the respondent. In my view, the respondent was fully alive to the fact that if Palaniappa Chettiar failed to obtain the necessary power from his principal, he would lose the land and had only Palaniappa Chettiar to look to for the repayment of his $7,000.

I do not consider it necessary to examine in detail the reasons which led the learned trial judge to hold that the deceased Somasundaram Chettiar had ratified the agreement during his life time for, in my view, the principle of ratification cannot apply to this agreement. That principle only applies where the agent has professed to contract for his principal who afterwards ratifies. The doctrine is thus stated by Tindal C.J. in *Wilson v. Tumman*[1], at page 242 :—

"That an act done for another, by a person, not assuming to act for himself, but for such other person, though without any precedent authority whatever, becomes the act of the principal, if subsequently ratified by him, is the known and well-established rule of law. In that case the principal is bound by the act, whether it be for his detriment or his advantage, and whether it be founded on a tort or on a contract, to the same effect as by; and with all the consequences which follow from the same act done by his previous authority."

In this case, the agent never even professed to contract as agent for a principal without authority — *vide* section 149 Contracts (Malay States) Ordinance, 1950.

I would allow this appeal with costs here and below, and make an order that judgment be entered for the plaintiff-appellant in terms of the prayers contained in sub-paragraphs (a) and (d) of paragraph 10 in the plaint. The deposit in Court will be refunded to the appellant.

Murray-Aynsley C.J. (S.) and **Knight J.** concurred.

Appeal allowed.

Solicitors : *Mitra & Co.; Suleiman Abdulrahman & Co.*

SOON KOOI HUN v. R. CHINDAN; R. NARAYANAN (Petitioner)

[C. R. J. (Spenser Wilkinson J.) October 18, 1954]

[Penang — Civil Revision No. 3 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 14 — Protection to lawful sub-tenant — Procedure to be adopted by sub-tenant aggrieved by order for possession against tenant — Subordinate Courts Rules, 1950, O.27.

This matter arose out of proceedings for possession taken out by the plaintiff, the landlord of premises No. 7 Ayer Itam Road, Penang, against the tenant. At the trial the tenant stated that he had no sub-tenants and the learned Magistrate therefore made no declaration in his order as to whether or not the sub-tenants were bound thereby. Execution was issued in respect of the premises but when the bailiff came to take possession he found persons other than the tenant and his family in occupation. A notice was then issued by the bailiff calling upon the occupiers to quit the premises. Thereupon the petitioner, who claimed to be a lawful sub-tenant, applied to the High Court for revision. At the hearing it was contended on behalf of the plaintiff that the procedure adopted by the petitioner in applying for revision was wrong.

Held: the proper course for the petitioner to adopt would have been to apply for relief to the Magistrate's Court and the case should be remitted to the Magistrate's Court for the petitioner to be heard and for determination on the question whether or not the petitioner was a sub-tenant who is entitled to protection under the Control of Rent Ordinance.

Case referred to:—

(1) *Barclay's Bank Ltd. v. Roberts* (1954) 1 W.L.R. 1212.

CIVIL REVISION.

Ong Huck Lim (*Lim Huck Aik* with him) for the plaintiff.

H. E. P. Powell for the petitioner.

Cur. Adv. Vult.

Spenser Wilkinson J.: — The plaintiff is the landlord of No. 7 Ayer Itam Road, Penang and sued the defendant, who was the tenant, for possession of the premises. Judgment was given in the Magistrate's Court against the defendant for possession. The defendant stated in evidence during the hearing that he had no sub-tenants and so the learned Magistrate, in my view quite properly, made no declaration in his Order as to whether or not the sub-tenants were bound thereby.

Execution was issued in respect of the premises but when the bailiff came to take possession he found persons other than the defendant and his family in occupation. A Notice was then issued by the bailiff and served upon the premises calling upon the occupiers to quit the premises on or before the 9th September, 1954, failing which force would be used to eject them. Thereupon the Petitioner, who claims to be a lawful sub-tenant, applied to the High Court for revision.

At the hearing before me Mr. Ong Huck Lim for the landlord submitted that the procedure adopted by the petitioner in applying for revision was wrong and that he should have applied for relief to the Magistrate's Court on the analogy of O.27 of the Subordinate Courts Rules 1950 which provides for objection proceedings in cases where a third party claims goods seized in execution. He invited me, therefore, to hold that revision proceedings did not lie and to leave the petitioner to commence objection proceedings in the Magistrate's Court.

Unfortunately the Subordinate Courts Rules, like the Rules of the Supreme Court in England, do not make satisfactory provision for implementing the protection afforded by Section 14 of the Rent Control Ordinance to lawful sub-tenants. The kind of difficulty which may arise in England is indicated in the judgments of the Court of Appeal in *Barclay's Bank Ltd. v. Roberts*[1] in which an amendment to O.47, r.1 of the English Rules was recommended. Whilst it is true that O.1, r.2 of the Subordinate Courts Rules gives wide powers to the Courts to adapt the procedure to special circumstances I think that difficulties similar to those met with in England are likely to continue here unless some modification is made to paragraph (d) of O.21, r.8 and to O.21, r.14(2) of the Subordinate Courts Rules and I feel impelled to suggest, therefore, that early consideration should be given by the appropriate authority to such amendments and possibly also to an amendment of O.27.

In the meantime I think the Notice given by the bailiff in this case was defective because it gave no indication to the sub-tenants of the proper steps to take to avoid ejectment. I think the notice to be served upon occupiers of premises in cases of this kind should call upon them to apply to the Court which issues the notice within a specified time. In a case where a person claiming to be a sub-tenant had been given a clear indication of the procedure he should adopt and had ignored that indication I would hesitate to act in revision.

In the present case I do not think any good purpose would be served by forcing the petitioner to make a fresh start by way of objection proceedings; and I do not think that in the circumstances the petitioner can be blamed for adopting a procedure which was clearly open to him, especially as in a recent case revision proceedings had been successful in somewhat similar circumstances.

I therefore order that this case be remitted to the Magistrate's Court for the petitioner to be heard and for determination of the question whether or not the petitioner is a sub-tenant who is entitled to the protection of the Rent Control Ordinance. The Magistrate's Court should follow as nearly as possible the procedure laid down in O.27, r.5 as though the petitioner had filed a valid objection and the plaintiff had contested it.

Order accordingly.

Solicitors: *Huck Aik & Cheng Hock; H. E. P. Powell & Co.*

Re YEAP CHOR EE, Decd. LEE CHENG KIN (w) & ORS. v. YEAP KIM HOE & ANOR.

[O. C. J. (Spenser Wilkinson J.) November 5, 1954]

[Penang — Originating Summons No. 61 of 1954]

Will — Gift of personal property — Shares — Imperfect gift — Whether donor has made himself a trustee for the donee.

The question which arose in this Originating Summons was whether a deed of settlement made by the testator Yeap Chor Ee, decd. constituted a good and valid gift of certain shares. The material parts of the deed are as follows:—